



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on December 1, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST-2003-16102- 4

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Joint Application of Continental Airlines, Inc. and Air Japan Co. Ltd. filed 9/4/2003,

XX Exemption under 49 U.S.C. 40109 for Continental Airlines, Inc., to provide the following service:

Scheduled foreign air transportation of mail between any point or points in the United States and any point or points in Japan. Continental also requests authority to integrate this authority with its existing certificate and exemption authority. Continental intends to operate this service under a code-share arrangement with Air Japan whereby Continental will place its code on flights operated by Air Japan.

XX Statement of Authorization under 14 CFR Part 212 for Air Japan to:

Display Continental's designator code for the carriage of mail on flights operated by Air Japan between the United States and Japan.

Applicant reps: R. Bruce Keiner, Jr. (202) 624-2615--CO DOT Analyst: Gerald Caolo (202) 366-2406
Charles J. Simpson, Jr. (202)-298-8660,
-Air Japan

DISPOSITION

XX Granted (subject to conditions, see below)

The exemption authority granted was effective when taken: December 1, 2003, through December 1, 2005

The statement of authorization granted was effective when taken: December 1, 2003, and will remain in effect indefinitely, subject to the conditions listed below:

Action taken by: **Paul L. Gretch, Director**
Office of International Aviation

XX Authority granted is consistent with the aviation agreement between the United States and Japan.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's Foreign Air Carrier Permit (Air Japan)
XX Holder's Certificate of Public Convenience and Necessity (Continental)
XX Standard Exemption Conditions (attached)

Conditions: The exemption authority granted is also subject to the following conditions:

(1) Any service provided under the route integration authority granted shall be consistent with all applicable agreements between the United States and the foreign countries involved, and further (a) nothing in our award of the route integration authority granted should be construed as conferring upon Continental rights (including fifth-freedom, intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Continental notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights,¹ and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Continental's authority by virtue of the route integration exemption granted here, but that are not then being used by Continental, the holding of such authority by route integration will not be considered as providing Continental a preference in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

The statement of authorization granted here to Air Japan is subject to the following conditions:

(a) The statement of authorization will remain in effect as long as (i) Continental and Air Japan continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) Continental and/or Air Japan must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services. Such notices should be filed in Docket OST-2003-16102.²

(c) Continental and/or Air Japan must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. Such notices should be filed in Docket OST-2003-16102.

(d) Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the airway bill) accept responsibility for the entirety of the code share journey for all obligations established in its contract of carriage with the shipper; and that the liability of the operating carrier be unaffected. Further, the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

The authority granted here is specifically conditioned so that neither Continental and nor Air Japan shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found the applicants qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

¹ This notice may be filed in Docket OST-2003-16102.

² We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp.*

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

08/2003